IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3908 of 2004

NAVA
V/S
BABU KHAN & ORS.

Mr. RAKESH ARORA, for the appellant / petitioner

Date of Order : 23.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

By the impugned order, learned Executing Court dismissed the application filed under O.21 R.58 and Sec. 47 read with Sec. 151 CPC. The decree sought to be executed is a decree of eviction, and in the execution of the decree of eviction, the decree holder seeks recovering possession, as such, provisions of O.21 Rule 58 CPC obviously has no application. Then coming to the objection raised under Sec. 47 CPC, learned counsel has invited my attention to the objection petition, being Annex.2, and a look whereof, shows that according to the petitioner, decree holder by concealing the material facts and by misleading the court, has obtained wrong decree, inasmuch as, instead of Kaccha rooms, decree holder has obtained the decree for plot as well, while decree holder had no title over that property. For this purpose, the petitioner had also invoked in the objection petition, the sequence of documents of title, and the notice given by plaintiff, so also some portion of cross-examination of plaintiff during the trial.

Suffice it to say that Executing Court has no jurisdiction to go into such pre-decreed matters, and since none of the objections raised, relate to any of the questions open to be gone into under Sec. 47 CPC, no interference is required to be made in the impugned order. The writ petition thus having no force, is hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/